

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
LIANGA-PACIFIC, INC.,

Appellant,

V.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 81-121

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the assessment of two \$250 civil penalties for the alleged violation of section 9.15 of Regulation I, came before the Pollution Control Hearings Board, David Akana (presiding), Nat Washington and Gayle Rothrock at a formal hearing on December 23, 1981, in Lacey.

Respondent appeared through its attorney, Keith D. McGoffin; appellant appeared through Archie Matthew, its president and general manager. Olympia court reporter Kim Otis recorded the proceeding.

Having heard the testimony, having examined the exhibits, and

1 having considered the contentions of the parties, the Board makes these

2 FINDINGS OF FACT

3 I

4 On July 8, 1981, at about 10:15 a.m., respondent's inspector
5 observed visible emissions coming from Lianga Pacific, Inc.'s storage
6 bunker located at 2120 Port of Tacoma Road in Tacoma. Upon further
7 investigation, the inspector saw sawdust emissions to the air coming
8 from the entrance and exits of a sawdust loading facility during
9 loading operations. No equipment to contain the emissions observed
10 was evident to the inspector. Because the manager was not at the
11 site, a notice of violation of section 9.15(a) was mailed to
12 appellant. A \$250 civil penalty (No. 5194) was thereafter assessed
13 from which followed an appeal to this Board.

14 II

15 On July 20, 1981, at about 1:38 p.m., respondent's inspector
16 observed visible emissions coming from the same storage bunker and
17 loading facility at appellant's site. Further inspection revealed
18 sawdust emissions to the air from the loading facility during loading
19 operations. A notice of violation of section 9.15(a) was given to
20 appellant's general manager, from which followed a \$250 civil penalty
21 (No. 5229) and this appeal.

22 III

23 Appellant's facility was placed into operation in 1979 without
24 having first obtained approval from respondent for new construction.
25 Problems with the facility occurred in 1981 after the facility was
26 redesigned to speed up loading operations.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

1 After receiving and paying for its first air pollution regulation
2 violation in May of 1981, at the instant facility, appellant sought to
3 enclose the bunker with reasonable speed on its part. The enclosure
4 was completed on October 10, 1981, at a cost of about \$21,000. Steps
5 taken to reduce emissions in the interim before completion of the
6 enclosure were placing a tarp on one side of the bunker and providing
7 a person to monitor loading operations.

8 IV

9 At a meeting held on August 31, 1981, respondent informed
10 appellant that no variance from the regulation could be granted
11 because of a ruling by the U.S. Environmental Protection Agency.

12 V

13 Pursuant to RCW 43.21B.260, respondent has filed with this Board,
14 a certified copy of its Regulation I and amendments thereto which are
15 noticed.

16 Section 9.15(a) makes it unlawful for any person to cause or
17 permit particulate matter to be handled, transported, or stored
18 without taking reasonable precautions to prevent the particulate
19 matter from becoming airborne.

20 Section 3.29 provides for a civil penalty of up to \$250 per day
21 for each violation of Regulation I.

22 VI

23 Any Conclusion of Law which should be deemed a Finding of Fact is
24 hereby adopted as such.

25 From these Findings the Board enters these

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

CONCLUSIONS OF LAW

I

Appellant's action on the dates in question did not amount to taking reasonable precautions to prevent particulate matter from becoming airborne. Accordingly, appellant violated section 9.15(a) of Regulation I as alleged on July 8 and 20, 1981.

II

Ordinarily, the \$250 civil penalties should be affirmed considering appellant's prior violation and the circumstances of this case. However, the reasonable steps taken to eliminate the emissions, at a substantial cost to appellant, is sufficient reason to suspend the penalties considering the purpose and policy of the Washington Clean Air Act.

III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The two \$250 civil penalties (Nos. 5194 and 5229) are affirmed, provided that payment of the penalties are suspended on condition that appellant not violate respondent's Regulation I from its site at 2120 Port of Tacoma Road for a period of six months from the date of this order.

DATED this 28th day of December, 1981.

POLLUTION CONTROL HEARINGS BOARD


NAT W. WASHINGTON, Chairman


GAYLE ROTHROCK, Member


DAVID AKANA, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER